

EN BANC

[G.R. No. 125416, September 26, 1996]

**SUBIC BAY METROPOLITAN AUTHORITY, PETITIONER, VS.
COMMISSION ON ELECTIONS, ENRIQUE T. GARCIA AND
CATALINO A. CALIMBAS, RESPONDENTS.**

DECISION

PANGANIBAN, J.:

The 1987 Constitution is unique in many ways. For one thing, it institutionalized people power in law-making. Learning from the bitter lesson of completely surrendering to Congress the sole authority to make, amend or repeal laws, the present Constitution concurrently vested such prerogatives in the electorate by expressly recognizing their residual and sovereign authority to ordain legislation directly through the concepts and processes of initiative and of referendum.

In this Decision, this Court distinguishes referendum from initiative and discusses the practical and legal implications of such differences. It also sets down some guidelines in the conduct and implementation of these two novel and vital features of popular democracy, as well as settles some relevant questions on jurisdiction -- all with the purpose of nurturing, protecting and promoting the people's exercise of direct democracy.

In this action for certiorari and prohibition, petitioner seeks to nullify the respondent Commission on Elections' Ruling dated April 17, 1996 and Resolution No. 2848 promulgated on June 27, 1996^[1] denying petitioner's plea to stop the holding of a local initiative and referendum on the proposition to recall *Pambayang Kapasyahan Blg. 10, Serye 1993, of the Sangguniang Bayan* of Morong, Bataan.

The Facts

On March 13, 1992, Congress enacted Republic Act No. 7227 (The Bases Conversion and Development Act of 1992), which among others, provided for the creation of the Subic Special Economic Zone, thus:

"Sec. 12. Subic Special Economic Zone. - Subject to the concurrence by resolution of the Sangguniang Panlungsod of the City of Olongapo and the Sangguniang Bayan of the Municipalities of Subic, Morong and Hermosa, there is hereby created a Special Economic and Free-port Zone consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America as amended, and within the territorial jurisdiction of the Municipalities of Morong and Hermosa, Province of Bataan, hereinafter

referred to as the Subic Special Economic Zone whose metes and bounds shall be delineated in a proclamation to be issued by the President of the Philippines. Within thirty (30) days after the approval of this Act, each local government unit shall submit its resolution of concurrence to join the Subic Special Economic Zone to the Office of the President. Thereafter, the President of the Philippines shall issue a proclamation defining the metes and bounds of the zone as provided herein." (Underscoring supplied)

RA 7227 likewise created petitioner to implement the declared national policy of converting the Subic military reservation into alternative productive uses.^[2] Petitioner was organized with an authorized capital stock of P20 billion which was fully subscribed and fully paid up by the Republic of the Philippines with, among other assets, "(a)ll lands embraced, covered and defined in Section 12 hereof, as well as permanent improvements and fixtures upon proper inventory not otherwise alienated, conveyed, or transferred to another government agency."^[3]

On November 24, 1992, the American navy turned over the Subic military reservation to the Philippine government. Immediately, petitioner commenced the implementation of its task, particularly the preservation of the seaports, airports, buildings, houses and other installations left by the American navy.

In April 1993, the *Sangguniang Bayan* of Morong, Bataan passed a *Pambayang Kapasyahan Bilang 10, Serye 1993*, expressing therein its absolute concurrence, as required by said Sec. 12 of RA 7227, to join the Subic Special Economic Zone. On September 5, 1993, the *Sangguniang Bayan* of Morong submitted *Pambayang Kapasyahan Bilang 10, Serye 1993* to the Office of the President.

On May 24, 1993, respondents Garcia, Calimbas and their companions filed a petition with the *Sangguniang Bayan* of Morong to annul *Pambayang Kapasyahan Blg. 10, Serye 1993*. The petition prayed for the following:

I. Bawiin, nulipikahin at pawalang-bisa ang Pambayang Kapasyahan Blg. 10 Serye 1993 ng Sangguniang Bayan para sa pag-anib ng Morong sa SSEFZ na walang kundisyon.

II. Palitan ito ng isang Pambayang kapasiyahan na aanib lamang ang Morong sa SSEFZ kung ang mga sumusunod na kondisyones ay ipagkakaloob, ipatutupad at isasagawa para sa kapakanan at interes ng Morong at Bataan:

(A) Ibalik sa Bataan ang 'Virgin Forests' -- isang bundok na hindi nagagalaw at punong-puno ng malalaking punong-kahoy at iba't-ibang halaman.

(B) Ihiwalay ang Grande Island sa SSEFZ at ibalik ito sa Bataan.

(K) Isama ang mga lupain ng Bataan na nakapaloob sa SBMA sa pagkukuenta ng salaping ipinagkaloob ng pamahalaang national o 'Internal Revenue Allotment' (IRA) sa Morong, Hermosa at sa Lalawigan.

(D) Payagang magtatag rin ng sariling 'special economic zones' ang

bawat bayan ng Morong, Hermosa at Dinalupihan.

(E) Ibase sa laki ng kanya-kanyang lupa ang pamamahagi ng kikitain ng SBMA.

(G) Ibase rin ang alokasyon ng pagbibigay ng trabaho sa laki ng nasabing mga lupa.

(H) Pabayaang bukas ang pinto ng SBMA na nasa Morong ng 24 na oras at bukod dito sa magbukas pa ng pinto sa hangganan naman ng Morong at Hermosa upang magkaroon ng pagkakataong umunlad rin ang mga nasabing bayan, pati na rin ng iba pang bayan ng Bataan.

(I) Tapusin ang pagkokonkreto ng mga daang Morong-Tala-Orani at Morong-Tasig-Dinalupihan para sa kabutihan ng mga taga-Bataan at tuloy makatulong sa pangangalaga ng mga kabundukan.

(J) Magkakaroon ng sapat na representasyon sa pamunuan ng SBMA ang Morong, Hermosa at Bataan."

The *Sangguniang Bayan* of Morong acted upon the petition of respondents Garcia, Calimbas, et al. by promulgating *Pambayang Kapasyahan Blg. 18, Serye 1993*, requesting Congress of the Philippines to amend certain provisions of R.A. No. 7227, particularly those concerning the matters cited in items (A), (B), (K), (E) and (G) of private respondents' petition. The *Sangguniang Bayan* of Morong also informed respondents that items (D) and (H) had already been referred to and favorably acted upon by the government agencies concerned, such as the Bases Conversion Development Authority and the Office of the President.

Not satisfied, and within 30 days from submission of their petition, herein respondents resorted to their power of initiative under the Local Government Code of 1991,^[4] Sec. 122 paragraph (b) of which provides as follows:

"Sec. 122. Procedure in Local Initiative. -

x x x

x x x

x x x

(b) If no favorable action thereon is taken by the sanggunian concerned, the proponents, through their duly authorized and registered representatives, may invoke their power of initiative, giving notice thereof to the sanggunian concerned.

x x x

x x x

x x x."

On July 6, 1993, respondent Commission *En Banc* in Comelec Resolution No. 93-1623 denied the petition for local initiative by herein private respondents on the ground that the subject thereof was merely a resolution (*pambayang kapasyahan*) and not an ordinance. On July 13, 1993, public respondent Comelec *En Banc* (thru Comelec Resolution no. 93-1676) further directed its Provincial Election Supervisor to hold action on the authentication of signatures being solicited by private respondents.

On August 15, 1993, private respondents instituted a petition for certiorari and mandamus^[5] before this Court against the Commission on Elections and the *Sangguniang Bayan* of Morong, Bataan, to set aside Comelec Resolution No. 93-1623 insofar as it disallowed the conduct of a local initiative to annul *Pambayang Kapasyahan Bilang 10, Serye 1993*, and Comelec Resolution No. 93-1676 insofar as it prevented the Provincial Election Supervisor of Bataan from proceeding with the authentication of the required number of signatures in support of the initiative and the gathering of signatures.

On February 1, 1995, pursuant to Sec. 12 of RA 7227, the President of the Philippines issued proclamation No. 532 defining the metes and bounds of the SSEZ. Said proclamation included in the SSEZ all the lands within the former Subic Naval Base, including Grande Island and that portion of the former naval base within the territorial jurisdiction of the Municipality of Morong.

On June 18, 1996, respondent Comelec issued Resolution No. 2845, adopting therein a "Calendar of Activities for local referendum on certain municipal ordinance passed by the *Sangguniang Bayan* of Morong, Bataan", and which indicated, among others, the scheduled referendum Day (July 27, 1996, Saturday). On June 27, 1996, the Comelec promulgated the assailed Resolution No. 2848 providing for "the rules and guidelines to govern the conduct of the referendum proposing to annul or repeal *Kapasyahan Blg. 10, Serye 1993 of the Sangguniang Bayan* of Morong, Bataan".

On July 10, 1996, petitioner instituted the present petition for certiorari and prohibition contesting the validity of Resolution No. 2848 and alleging, *inter alia*, that public respondent "is intent on proceeding with a local initiative that proposes an amendment of a national law. x x x"

The Issues

The petition^[6] presents the following "argument":

"Respondent Commission on Elections committed grave abuse of discretion amounting to lack of jurisdiction in scheduling a local initiative which seeks the amendment of a national law."

In his Comment, private respondent Garcia claims that (1) petitioner has failed to show the existence of an actual case or controversy; (2) x x x petitioner seeks to overturn a decision/judgment which has long become final and executory; (3) x x x public respondent has not abused its discretion and has in fact acted within its jurisdiction; (and) (4) x x x the concurrence of local government units is required for the establishment of the Subic Special Economic Zone."

Private respondent Calimbas, now the incumbent Mayor of Morong, in his Reply (should be Comment) joined petitioner's cause because "(a)fter several meetings with petitioner's Chairman and staff and after consultation with legal counsel, respondent Calimbas discovered that the demands in the petition for a local initiative/referendum were not legally feasible."^[7]

The Solicitor General, as counsel for public respondent, identified two issues, as follows:

"1. Whether or not the Comelec can be enjoined from scheduling/conducting the local initiative proposing to annul Pambayang Kapasyahan Blg. 10, Serye 1993 of the Sangguniang Bayan of Morong, Bataan.

2. Whether or not the Comelec committed grave abuse of discretion in denying the request of petitioner SBMA to stop the local initiative."

On July 23, 1996, the Court heard oral argument by the parties, after which, it issued the following resolution:

"The Court Resolved to (1) GRANT the Motion to Admit the Attached Comment filed by counsel for private respondent Enrique T. Garcia, dated July 22, 1996 and (2) NOTE the: (a) Reply (should be comment) to the petition for certiorari and prohibition with prayer for temporary restraining order and/or writ of preliminary injunction, filed by counsel for respondent Catalino Calimbas, dated July 22, 1996; (b) Separate Comments on the petition, filed by: (b-1) the Solicitor General for respondent Commission on Elections dated July 19, 1996 and (b-2) counsel for private respondent Enrique T. Garcia, dated July 22, 1996 and (c) Manifestation filed by counsel for petitioner dated July 22, 1996.

At the hearing of this case this morning, Atty. Rodolfo O. Reyes appeared and argued for petitioner Subic Bay Metropolitan Authority (SBMA) while Atty. Sixto Brillantes for private respondent Enrique T. Garcia, and Atty. Oscar L. Karaan for respondent Catalino Calimbas. Solicitor General Raul Goco, Assistant Solicitor General Cecilio O. Estoesta and Solicitor Zenaida Hernandez-Perez appeared for respondent Commission on Elections with Solicitor General Goco arguing.

Before the Court adjourned, the Court directed the counsel for both parties to INFORM this Court by Friday, July 26, 1996, whether or not Commission on Elections would push through with the initiative/referendum this Saturday, July 27, 1996.

Thereafter, the case shall be considered SUBMITTED for resolution.

At 2:50 p.m. July 23, 1996, the Court received by facsimile transmission an Order dated also on July 23, 1996 from the respondent Commission on Elections En Banc inter alia 'to hold in abeyance the scheduled referendum (initiative) on July 27, 1996 pending resolution of G.R. No. 125416.' In view of this Order, the petitioner's application for a temporary restraining order and/or writ of preliminary injunction has become moot and academic and will thus not be passed upon by this Court at this time. Puno, J., no part due to relationship. Bellosillo, J., is on leave."

After careful study of and judicious deliberation on the submissions and arguments of the parties, the Court believes that the issues may be restated as follows:

(1) Whether this petition "seeks to overturn a decision/judgment which has long become final and executory"; namely G.R. No. 111230, *Enrique Garcia, et al. vs. Commission on Elections, et al.*;